

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

**Michael Tomsha
20358 Gloria Drive
Macomb, MI 48044**

Enforcement Case No. 06-4704

Respondent

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**Issued and entered,
on October 25, 2006
by Frances K. Wallace
Chief Deputy Commissioner**

CONSENT ORDER

I.

BACKGROUND

Empire Loans LLC is a Michigan domestic limited liability company, organized under the laws of the state of Michigan, that has made applications for licensure as a mortgage broker under the Mortgage Brokers, Lenders, and Servicers Licensing Act (“MBLSLA”), Act No. 173 of 1987, as amended, MCL 445.1651 *et seq.*, and a registration under the Secondary Mortgage Loan Act, Act No. 125 of 1981, as amended, MCL 493.51 *et seq.* Michael Tomsha (Respondent) is the sole member of Empire Loans LLC. Respondent is not licensed or registered by the Office of Financial and Insurance Services (“OFIS”) pursuant to the MBLSLA, or any other consumer finance statute

regulated by OFIS. In reviewing Empire Loans LLC's applications, OFIS staff determined that Respondent was conducting mortgage related activities, which require licensure as a mortgage broker under the MBLSLA.

Respondent and OFIS staff have conferred and have agreed to resolve this matter according to the terms set forth below.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In the Personal Disclosure Statement submitted to OFIS by Empire Loans LLC on or about May 10, 2006, Respondent indicated that from November 15, 2002, to the present, mortgage brokers employed him to originate mortgage loans. Specifically, Respondent originated loans for two licensed mortgage brokers, Thomas J. Bergstrom dba Options Mortgage ("Options Mortgage") and Optimal Mortgage Company LLC. Respondent originated loans for Options Mortgage from November 15, 2002, to June 1, 2003, and Optimal Mortgage Company LLC from June 1, 2003 to the present. Contrary to Respondent's assertion that he was an employee of the aforementioned mortgage brokers, Respondent was an independent contractor, and not an employee of either Options Mortgage or Optimal Mortgage Company LLC. In fact, Respondent provided OFIS staff with 1099 forms for the years 2003, 2004, and 2005 indicating that he received nonemployee compensation from Options Mortgage and Optimal Mortgage Company LLC.

2. Section 2 of the MBLSLA proscribes Respondent from receiving compensation from Options Mortgage or Optimal Mortgage Company LLC unless he is solely performing services as an employee of either Options

Mortgage or Optimal Mortgage Company LLC, or meets any of the exceptions enumerated in Section 2 of the MBLSLA. Respondent does not meet any of exceptions specified in Section 2 of the MBLSLA and, consequently, Respondent's receipt of nonemployee compensation for originating mortgage loans is a violation of the MBLSLA.

3. Section 2(1) of the MBLSLA prohibits a person from acting as a mortgage broker,

mortgage lender, or mortgage servicer without first obtaining a license or registration.

4. Section 2(3) of the MBLSLA prohibits a residential mortgage loan originator (also known as a loan officer) from receiving directly or indirectly any compensation, commission, fee, points or other remuneration from a mortgage broker, mortgage lender, or mortgage servicer other than his/her employer.

5. Based on the forgoing, Respondent has conducted first lien mortgage business without the requisite license or registration certificate required under Section 2(1) of the MBLSLA.

III.

ORDER

Therefore it is ORDERED that:

1. Respondent shall cease and desist violating Sections 2(1) and 2(3) of the MBLSLA.

2. Respondent shall pay to OFIS an applicable civil penalty of \$1,000.00.

3. Respondent, as the sole member of Empire Loans LLC, shall establish and maintain a program to monitor and ensure compliance with all state and federal consumer laws and regulations relating to all mortgage activity.

4. Respondent, as the sole member of Empire Loans LLC, shall educate himself and all employees of Empire Loans LLC with respect to all state and federal consumer laws and regulations, including the Mortgage Brokers, Lenders, and Servicers Licensing Act.

5. Respondent shall review and ensure that Empire Loans LLC complies with the OFIS Consumer Finance Bulletin No. 2003-09-CF, posted on the OFIS website, which clarifies OFIS' position on employees and branch offices in Michigan.

6. Respondent, as the sole member of Empire Loans LLC, shall immediately designate a compliance officer for Empire Loans, LLC and provide written notification to OFIS of the compliance officer's name and business address, to ensure that Empire Loans LLC is in compliance with all applicable state and federal laws. Respondent's written notice designating a compliance officer shall accompany his payment of a civil penalty as provided for in Paragraph 2 of this Order. Respondent, as the sole member of Empire Loans LLC, shall notify the Office of Financial and Insurance Services of any change in designation of the compliance officer within 30 days of such re-designation.

The Commissioner retains jurisdiction over the matters contained herein and has the authority to issue such further Order(s) as she shall deem just, necessary, and appropriate in accordance with the provisions of the MBLSLA. Failure by Michael Tomsha and Empire

Loans LLC to abide by the terms and provisions of this Order may result in the commencement of additional proceedings.

Frances K. Wallace
Chief Deputy Commissioner